IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs October 5, 2006

RICHARD K. LONGPHRE v. CAROLYN LONGPHRE

Appeal from the Circuit Court for Hamilton County
No. 91 DR 712 W. Neil Thomas, III, Judge

No. E2006-00323-COA-R3-CV - FILED APRIL 25, 2007

This is a post-divorce case. Carolyn Longphre ("Wife") registered in South Carolina a support order of the Hamilton County Circuit Court ("the trial court") against her former husband, Richard K. Longphre ("Husband"). The South Carolina court ordered Husband to pay Wife an alimony arrearage of $64,475.39. Husband brought the instant action, asking the trial court to hold that Wife, by seeking an alimony arrearage in South Carolina, breached a written contract between the parties, by the terms of which Wife had released Husband from his court-ordered alimony obligation. The trial court granted Wife summary judgment. Husband appeals. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and SHARON G. LEE, JJ., joined.

R. Jonathan Guthrie, Chattanooga, Tennessee, for the appellant, Richard K. Longphre.

John R. Meldorf, III, Hixson, Tennessee, for the appellee, Carolyn Longphre.

OPINION

I.

The parties were divorced by the trial court in 1992. As subsequently modified by the court, Husband was ordered to pay Wife $400 per month as alimony *in futuro*. The site of this litigation shifted to the state of South Carolina in May 2003. That is when Wife filed a petition in the Richland County Family Court relying upon the South Carolina version of the Uniform Interstate Family Support Act ("the UIFSA"), and requesting that the South Carolina court register the trial court's order pertaining to the subject of Husband's alimony obligation. Husband received notice of the filing by way of certified mail. According to Husband, he was, at the time, a resident of Lexington County, South Carolina. He further stated that he had never resided in Richland County. Husband

says that, upon receiving the notice, he contacted the clerk of the Richland County court and informed the clerk that the petition had been filed in the wrong county. Husband claims that the clerk then "assured [him] that the matter would not move forward because venue was improper." Husband took no further action.

The Richland County Family Court held a hearing on Wife's petition in September 2003. Husband was personally served with a notice of the hearing but failed to appear in person or by counsel. Following the hearing, the South Carolina court entered an order, which, in pertinent part, sets forth the following findings and conclusions:

> [Wife] is a resident and citizen of the County of Hamilton, Tennessee. [Husband] resides in Lexington County, South Carolina but at the time of filing of the action, [Wife], upon information and belief, believed that [Husband] resided in Richland County, South Carolina.
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> By Orders of the Circuit Court of Tennessee for Hamilton County Division IV, [Husband] was ordered among other things to pay alimony and child support. [Husband] refused and failed to pay said alimony except when ruled into Court for contempt of Court and sentenced to jail time. [Husband] left the State of Tennessee in 1995 and owed a total alimony arrearage of $3,800 at the time. [Husband] has failed to pay any sums since then and is presently in arrears in the amount of $38,400 as of March 31, 2003 and is in contempt of Court for his violation of the Orders of the Court and should be ordered to comply with said Orders.
>
> Said Orders have been properly registered for enforcement in the State of South Carolina pursuant to the Uniform Interstate Family Support Act, UIFSA, set out in South Carolina Code of Laws, Section 20-7-960 through 20-7-1170. [Husband] was served with a copy of Summons, Petition, Notice of Filing and Registration of Foreign Support Order, Verified Statement of Facts for Registration of a Foreign Support Order under UIFSA and Affidavit of Arrearage by Certified Mail, Restricted Delivery on May 29, 2003. [Husband] failed to contest the validity or enforcement of the Registered Orders within the time limit set out by statute, therefore the Registered Orders are enforceable and the arrearage confirmed as of the date of registration and further contest of that Order with respect to any matter that could have been asserted is precluded. By the most recent Tennessee Court Order, [Husband] is ordered to pay the sum of $400 per month alimony. Said future payments should be made payable through the Richland County Family Court by wage withholding. [Husband] should be required to pay the arrearage due, together with

> interest, pursuant to Tennessee law at the rate of 10% per annum. Pursuant to Pertew v. Pertew, 03A01-9711-CH-00505 (Tenn. App. 7-13-1999) each installment due accrues interest at the rate of 10% from the due date of the payment as a matter of law. Therefore, [Husband]'s arrearage as of August 1, 2003 is $64,475.39. Said sum should also be reduced to a judgment and entered into the Judgment Rolls of the Clerk of Court in Richland County.

(Numbering in original omitted). The South Carolina court also ordered Husband to pay attorney's fees and costs incurred by Wife in filing her petition. Husband subsequently failed to make the payments ordered by the South Carolina court, and, as a consequence of this failure, he was incarcerated.

In March 2004, the South Carolina court held a hearing on a motion to reconsider filed by Husband. Husband did not personally attend the hearing because, according to him, he was still in jail for failing to comply with the terms of the South Carolina order; however, he was represented by counsel at this hearing. During the hearing, counsel for Husband attempted to explain Husband's absence from the earlier September 2003 hearing, stating that Husband "made a mistake" in not attending the hearing. Husband's counsel then explained how Husband had contacted the clerk upon receiving notice of Wife's petition and informed the clerk that he resided in Lexington County, not Richland County. He stated that Husband "made an assumption that the matter was going to be transferred to Lexington County." Husband's counsel also discussed the fact that "it was [Husband]'s belief that an agreement that he had entered into with [Wife] some years before" released him from his alimony obligation. Husband sent the South Carolina court a copy of the alleged agreement on the morning of the motion hearing. This is the first time that the agreement regarding release of the alimony obligation had been brought to the attention of the South Carolina court. That court refused to address the validity of the contract and ruled that its previous order would remain in full force and effect. Shortly thereafter, Husband filed the instant case in Tennessee.

In his Tennessee complaint, Husband states that the parties executed a contract in 1995 that terminated his alimony obligation in exchange for his agreement to pay $100 per week to the parties'

daughter.[1] The complaint seeks (1) relief under Tenn. R. Civ. P. 60; (2) a finding of breach of contract on the part of Wife; and (3) a declaratory judgment on the issue of whether Wife's petition to register the support order in South Carolina was barred by the applicable statute of limitations and the equitable defenses of waiver and estoppel.

Wife filed a motion for summary judgment arguing, among other things, that Husband's complaint was an impermissible collateral attack on the judgment of the South Carolina court. In opposition to Wife's motion, Husband asserted that the instant case was an independent breach of contract action rather than a collateral attack on a foreign judgment. He also argued that the trial court should not give the South Carolina order full faith and credit (1) because it was inconsistent with the public policy of Tennessee in that "it did not honor the valid written contract the parties entered into"; and (2) because he "was denied due process and did not receive the opportunity to be heard before the court entered the South Carolina judgment."

The trial court granted Wife summary judgment. In its memorandum opinion, the court addressed Husband's breach of contract claim as follows:

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[1] The document provides as follows:

> **FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:
>
> 1. [Wife] hereby releases [Husband] for any and all claims that she now has or may have in the future against [Husband] for the payment of alimony or child support, including but not limited to any and all obligations arising from the divorce action in the Hamilton County Circuit Court, Division IV, no. 91DR-712.
>
> 2. [Husband] agrees to make a good faith effort to pay $100.00 per week to the parties' child, Elizabeth Longphre, for so long as she is pursuing an undergraduate college degree. Such payment shall be made directly to Elizabeth Longphre. Such payments shall continue until the earlier of her graduation or five (5) years from the date hereof.
>
> 3. The parties expressly agree that any failure to make payments by [Husband] pursuant to paragraph 2 above, shall not invalidate the release by [Wife] in paragraph 1 above.
>
> 4. The parties acknowledge that oral representations by [Husband]'s father constitute additional consideration to support this Agreement. Both parties recognize that such oral representations by [Husband]'s father do no constitute an enforceable contract, against [Husband]'s father, but both parties accept his expression of his intentions as additional consideration, and expressly agree that this Agreement shall not fail for lack of consideration due to any actions taken or not taken by [Husband]'s father.

(Capitalization, bold print, and numbering in original).

> [Husband] has asked the Court to deny [Wife]'s motion for summary judgment because the issue between [Wife] and him could also be considered a contractual issue. It is the opinion of this Court that, despite [Husband]'s characterization, the real issue in this case is regarding spousal and child support, which was addressed by the Richland County, South Carolina Court. The judgment by the South Carolina Court will be given full faith and credit by this Court.

The trial court also found that Husband had failed to prove a due process violation. The court pretermitted Husband's contention that the South Carolina order violated Tennessee public policy. The court opined that there was nothing in the record before it precluding a grant to Wife of summary judgment. From this judgment, Husband appeals.

II.

As the Supreme Court has instructed,

> [t]he standards governing an appellate court's review of a motion for summary judgment are well settled. Since our inquiry involves purely a question of law, no presumption of correctness attaches to the lower court's judgment, and our task is confined to reviewing the record to determine whether the requirements of Tenn. R. Civ. P. 56 have been met. *See Hunter v. Brown*, 955 S.W.2d 49, 50-51 (Tenn. 1997); *Cowden v. Sovran Bank/Central South*, 816 S.W.2d 741, 744 (Tenn. 1991). Tennessee Rule of Civil Procedure 56.04 provides that summary judgment is appropriate where: (1) there is no genuine issue with regard to the material facts relevant to the claim or defense contained in the motion, *see Byrd v. Hall*, 847 S.W.2d 208, 210 (Tenn. 1993); and (2) the moving party is entitled to a judgment as a matter of law on the undisputed facts. *See Anderson v. Standard Register Co.*, 857 S.W.2d 555, 559 (Tenn. 1993). The moving party has the burden of proving that its motion satisfies these requirements. *See Dowden v. Allstate Ins. Co.*, 811 S.W.2d 523, 524 (Tenn. 1991). When the party seeking summary judgment makes a properly supported motion, the burden shifts to the nonmoving party to set forth specific facts establishing the existence of disputed, material facts which must be resolved by the trier of fact. *See Byrd v. Hall*, 847 S.W.2d at 215.
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> * * *
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> The standards governing the assessment of evidence in the summary judgment context are also well established. Courts must view the

> evidence in the light most favorable to the nonmoving party and must also draw all reasonable inference in the nonmoving party's favor. *See Robinson v. Omer*, 952 S.W.2d [423,] 426 [(Tenn. 1997)]; *Byrd v. Hall*, 847 S.W.2d 210-11. Courts should grant a summary judgment only when both the facts and the inferences to be drawn from the facts permit a reasonable person to reach only one conclusion. *See McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995); *Carvell v. Bottoms*, 900 S.W.2d 23, 26 (Tenn. 1995).

Staples v. CBL & Assocs., Inc., 15 S.W.3d 83, 88-89 (Tenn. 2000).

III.

Husband raises several issues for our consideration. Those issues, as taken verbatim from his brief, are as follows:

> 1. Whether the [t]rial [c]ourt erred in giving full faith and credit to the South Carolina Court Judgment ordering [Husband] to pay alimony to [Wife] for the term after the 1995 out of court agreement to terminate alimony in futuro (the "Agreement").
>
> 2. Whether the out of court agreement [Husband] and [Wife] executed in 1995 terminated [Husband]'s alimony in futuro obligation.
>
> 3. Whether the doctrines of waiver and laches precluded [Wife] from seeking alimony for [Husband] in 2003, eight years after the parties' Agreement terminated alimony.
>
> 4. Whether res judicata does not apply to this case because the South Carolina Court never considered, and therefore never ruled upon, the Agreement terminating alimony in futuro.
>
> 5. Whether [Husband] is entitled to due process and the opportunity to be heard with respect to his claims in this case.

As we construe them, Husband's issues present us with two fundamental questions. The first is whether the South Carolina judgment is entitled to full faith and credit. The second is whether the breach of contract claim that Husband now attempts to assert was a compulsory counterclaim to Wife's attempt in South Carolina to register her Tennessee judgment and secure a judgment for an alimony arrearage, and, as such, should have been filed in the South Carolina registration proceeding.

IV.

A.

We first turn our attention to the question of whether the South Carolina judgment is entitled to full faith and credit in Tennessee. Generally speaking, foreign judgments are entitled to full faith and credit in the courts of this state. *See* U.S. Const. art. IV, § 1; ***Biogen Distribs., Inc. v. Tanner***, 842 S.W.2d 253, 256 (Tenn. Ct. App. 1992). As stated by this Court in ***Coastcom, Inc. v. Cruzen***, 981 S.W.2d 179 (Tenn. Ct. App. 1998),

> [o]nce a foreign judgment has been enrolled, it has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a court of record in Tennessee and may be enforced or satisfied in a like manner. T.C.A. § 26-6-104(c). Therefore, the grounds and procedures for vacating or reopening foreign judgments are those contained in Rule 60.02 T.R.C.P. *Biogen Distribs., Inc. v. Tanner*, 842 S.W.2d 253, 256 (Tenn. App.1992). Parties seeking to undermine the validity of a foreign judgment must meet a "stern and heavy" burden to demonstrate that the foreign judgment should not be enforced in Tennessee. *Dement v. Kitts*, 777 S.W.2d 33,36 (Tenn.App.1989). The factual issues underlying the foreign judgment may not be the basis of an inquiry to deny the foreign judgment full faith and credit. *Benham v. Fisher*, 650 S.W.2d 759 (Tenn.App.1983). . . . The full faith and credit clause requires that the common law doctrine of *res judicata* be applied in one state to a judgment rendered in another state to the same extent that it applied in the state of its rendition. *Atchley v. Atchley*, 585 S.W.2d 614, 616 (Tenn.App. 1978). *Res judicata* is an absolute bar to a subsequent suit between the same parties on the same cause of action, and it concludes such parties not only as to all matters that were actually put at issue and determined, but also all matters which might have been put at issue and determined. *McKinney v. Widner*, 746 S.W.2d 699, 705 (Tenn.App.1987).

Coastcom, Inc., 981 S.W.2d at 181.

Husband argues that the trial court erred in giving the South Carolina judgment full faith and credit because, according to him, the judgment violates Tennessee public policy. As this Court recently stated in the case of ***Trustmark Nat'l Bank v. Miller***, 209 S.W.3d 54 (Tenn. Ct. App. 2006),

> "the United States Supreme Court has recognized at least three exceptions to the full faith and credit clause." Specifically, states may

> refuse to apply full faith and credit to judgments that are 1) void due to a lack of personal or subject matter jurisdiction, 2) based upon fraud, or 3) "where enforcement of the judgment would violate the public policy of the forum state." Tennessee courts have also recognized and adopted these exceptions.

Id. at 57 (citations omitted). Husband does not argue that the South Carolina court lacked subject matter jurisdiction or that it did not have jurisdiction over his person; nor does he argue that the South Carolina judgment was based upon fraud. Rather, Husband asserts that the South Carolina court "violated Tennessee public policy by refusing to consider the Agreement." His basic argument is this: Tennessee law "dictates that contracts entered into knowingly and willingly . . . be enforced as written"; therefore, because the South Carolina court did not consider the contract, the South Carolina court's judgment violates Tennessee public policy. This reasoning is seriously flawed.

It is true, as asserted by Husband, that Tennessee courts, as a general proposition, enforce written contracts that are entered into voluntarily. However, it does not follow from this that a court violates Tennessee public policy when it fails to address a contract, the existence and validity of which were not timely asserted.

The South Carolina version of the UIFSA, the statutory scheme under which Wife filed her petition in South Carolina, provides that the nonregistering party – *i.e.,* Husband in this case – has 20 days after the date of the mailing of the notice of registration to contest the validity and enforcement of the registered order. S.C. Code Ann. § 20-7-1142(A). If the nonregistering party fails to contest the registered order within the 20-day time period, "the order is confirmed by operation of law." ***Id.*** at (B). "Confirmation of a registered order, whether by operation of law or after notice and hearing, *precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.*" S.C. Code Ann. § 20-7-1146 (emphasis added). The notice of registration received by the nonregistering party must inform that party of this procedure

and the burden that the nonregistering party bears to contest the registration. S.C. Code Ann. § 20-7-1140.[2]

The record supports a finding that Husband received written notice of Wife's petition to register the Tennessee support order in South Carolina. It is clear from the record that the notice sent to Husband advised him that he had 20 days to contest the registration and that, if he failed to do so within the allotted time, he would be precluded from later contesting the registration with respect to any matter that could have been asserted in the registration proceeding. Husband's assertion that the parties contracted to terminate his alimony obligation is a defense that could have been and should have been asserted during the 20-day period following Husband's receipt of the notice of registration. *See* S.C. Code Ann. § 20-7-1144(A). It was Husband's burden to raise this issue before the South Carolina court. *See* ***id.*** He did not raise the issue until *after* that court had confirmed the Tennessee support order and directed him to pay a substantial arrearage. The South Carolina court therefore concluded, in accordance with the UIFSA, that Husband was precluded from contesting the registered order with respect to the contractual defense. The South Carolina judgment does not violate Tennessee public policy.

This analysis also disposes of Husband's separate argument that the petition filed by Wife in South Carolina is barred by the equitable doctrines of laches and waiver. Laches and waiver are defenses that could have, and should have, been asserted during the registration process in South Carolina. They were not; therefore, Husband is precluded from contesting the registered order based upon them. *See* S.C. Code Ann. § 20-7-1146.

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[2] S.C. Code Ann. § 20-7-1140 provides, in pertinent part, as follows:

> (A) . . .Notice must be given by first-class, certified, or registered mail or by any means of personal service authorized by the law of this State. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.
>
> (B) The notice must inform the nonregistering party:
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> (1) that a motion to contest the validity or enforcement of the registered order must be filed within twenty days after the date of mailing or personal service of the notice;
>
> (2) of the amount of alleged arrearage, if any;
>
> (3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and any alleged arrearage and precludes further contest of that order with respect to any matter that could have been asserted; and
>
> (4) that a registered order is enforceable as of the date of registration in the same manner as a support order issued by a tribunal of this State.

Id.

B.

Husband also contends that the South Carolina judgment should not have been given full faith and credit because the South Carolina proceeding violated his constitutional right to due process.

Notice and an opportunity to be heard are the minimal requirements of due process. ***Mullane v. Central Hanover Bank & Trust Co.***, 339 U.S. 306, 313, 70 S.Ct. 652, 656-57, 94 L.Ed. 865 (1950). To support his argument on this issue, Husband cites the fact that he was in jail when the South Carolina court held the hearing on his motion to reconsider. Husband does not argue that he did not receive notice of the hearing date. He asserts that the South Carolina court denied him an opportunity to be heard by "ma[king] no effort to allow [him] to appear after the Court learned he was in custody."

The trial court found that Husband had failed to establish that he was deprived of an opportunity to be heard in the South Carolina proceeding. We agree. There is no evidence that Husband made an effort to appear at the motion hearing. For example, there is no indication that he told the appropriate authorities that he wanted to appear at the hearing and that those authorities denied him that opportunity. *Cf.* ***In re Riggs,*** 612 S.W.2d 461, 469 (Tenn. Ct. App. 1980) (denying full faith and credit to a foreign adoption decree where it was established that the natural father did not receive notice of the foreign adoption proceeding and consequently was not before the court). We simply cannot hold that summary judgment was inappropriate on this issue without a factual predicate supporting Husband's contention that he was denied the opportunity to be heard. *See* ***Byrd***, 847 S.W.2d at 215.

V.

We now address the separate question of whether the trial court was correct in granting Wife summary judgment as to Husband's breach of contract claim. We hold that the trial court was correct; however, we base our decision on somewhat different grounds. Specifically, we hold that Husband's complaint for breach of contract is barred by the fact that it was not filed in response to Wife's petition in the South Carolina proceeding.

In South Carolina, compulsory counterclaims are governed by Rule 13(a)[3] of the South Carolina Rules of Civil Procedure, which provides, in pertinent part, that

> [a] pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication

[3]Tenn. R. Civ. P. 13.01 is almost identical to the South Carolina rule.

> the presence of third parties of whom the court cannot acquire jurisdiction.

"If a compulsory counterclaim is not raised in the first action, a defendant is precluded from asserting the claim in a subsequent action." ***Beach Co. v. Twillman, LTD.***, 566 S.E.2d 863, 865 (S.C. Ct. App. 2002). One of the purposes of this rule is "to insure against the 'undesirable possibility . . . whereby a party having a . . . compulsory counterclaim could avoid stating it . . . by bringing an independent action in another court after the commencement of the [initial action].'" ***Id.*** at 866 (citing ***Sparrow v. Nerzig***, 89 S.E.2d 718, 721 (S.C. 1955)).

In South Carolina, the test for determining if a counterclaim is compulsory is whether there is a "logical relationship" between the claim and the counterclaim. ***North Carolina Fed. Sav. & Loan Ass'n v. DAV Corp.***, 381 S.E.2d 903, 905 (S.C. 1989). Whether a counterclaim is logically related to the initial claim depends upon the unique facts of each case. *See* ***First-Citizens Bank & Trust Co. v. Hucks***, 408 S.E.2d 222, 223 (S.C. 1991). For example, in ***North Carolina Fed. Sav. & Loan Ass'n v. DAV Corp.***, the plaintiff lender sought to foreclose on a note and mortgage on a hotel condominium project in which the defendant DAV was a joint venturer. ***Id.*** at 904. DAV counterclaimed, alleging, in part, that the plaintiff had breached a subsequent oral contract to provide additional financing to the joint venture. ***Id.*** at 904-05. The South Carolina Supreme Court held that this counterclaim was compulsory because "there [was] a logical relationship between the enforceability of the note which [was] the subject of the foreclosure action and the validity of the purported oral agreement which, if performed, would have avoided default on the note by the joint venture." ***Id.*** at 905.

The order of the South Carolina court reflects that certain papers were served on Husband in connection with Wife's registration petition. One of the papers is referred to by that court as an "Affidavit of Arrearage." It is clear from the record that the claimed arrearage is one of alimony. The theory of Wife in that proceeding was that Husband had been ordered by the divorce court in Tennessee to pay her alimony; that Husband had failed to do so; and that she was entitled, by virtue of the Tennessee order, to a substantial alimony arrearage. Husband's theory of his breach of contract claim filed in the instant case was that Wife, for a valuable consideration, had contracted with him to forego collection of the alimony ordered by the Tennessee court. These concepts are mutually exclusive. We conclude from this that there is a "logical relationship" between the claim asserted by Wife in South Carolina and the claim that Husband is now attempting to assert in Tennessee. Hence, we hold that Husband's breach of contract claim was, under Rule 13(a) of the South Carolina Rules of Civil Procedure, a compulsory counterclaim. Therefore, because Husband failed to assert his affirmative claim in the South Carolina proceeding, he is precluded from asserting it now in Tennessee. *See* ***Beach Co.***, 566 S.E.2d at 865. Accordingly, we affirm the trial court's decision to grant Wife summary judgment as to Husband's breach of contract claim although we do so on different grounds. *See* ***Perlberg v. Jahn***, 773 S.W.2d 925, 928 (Tenn. Ct. App. 1989) ("Where a trial judge has reached a correct result [the judge] will not be reversed because he may have predicated it on an erroneous reason.").

VI.

The judgment of the trial court is affirmed. This case is remanded to the trial court for the collection of costs assessed below, pursuant to applicable law. Costs on appeal are taxed to the appellant, Richard Longphre.

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CHARLES D. SUSANO, JR., JUDGE